

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Samuel H. Christie, IV
Serial No. 10/628,167

Examiner: Brenda H. Pham
Art Unit: 2616

Filed: 07/28/2003

For: **MOBILITY IN A MULTI-ACCESS COMMUNICATION NETWORK**

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

An **APPEAL BRIEF** is filed herewith. The Appellant encloses a payment in the amount of \$670.00 as required by 37 C.F.R. § 1.17(b) to cover the fees associated with this Appeal Brief and with a One-month Extension of Time and requests that this be considered a petition therefor. If any additional fees are required in association with this appeal brief, the Director is hereby authorized to charge them to Deposit Account 14-1315, and consider this a petition therefor.

APPEAL BRIEF

(1) REAL PARTY IN INTEREST

The real party in interest is the assignee of record, i.e., Nortel Networks Limited of 2351 Boulevard Alfred-Nobel, St. Laurent, Quebec Canada H4S 2A9, which is wholly owned by Nortel Networks Corporation, a Canadian corporation.

(2) RELATED APPEALS AND INTERFERENCES

This Appeal Brief is related to a Notice of Appeal and Pre-Appeal Brief Request for Review (hereinafter “PABR”) filed on August 8, 2008. In response to the PABR and Notice of Appeal filed on August 8, 2008, the Patent Office reopened prosecution through the mailing of a non-final Office Action on November 17, 2008.

(3) STATUS OF CLAIMS

Claims 1-38 were rejected in a non-final Office Action mailed November 17, 2008.

Claims 1-38 are pending and are the subject of this appeal.

(4) STATUS OF AMENDMENTS

All amendments have been entered to the best of the Appellant's knowledge. No amendments have been filed after the non-final Office Action mailed November 17, 2008.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

In the following summary, the Appellant has noted where in the Specification certain subject matter exists. The Appellant wishes to point out that these citations are for demonstrative purposes only and that the Specification may include additional discussion of the various elements, citations to which are not pointed out below. Thus, the noted citations are in no way intended to limit the scope of the pending claims.

Independent claim 1 recites a method for facilitating packet communications from a terminal (See Figure 1, element 14; See also Specification, paragraph 0013) to a network proxy (See Figure 1, element 12; See also Specification, paragraph 0013) comprising:

- a) establishing a plurality of communication sessions via a plurality of access networks (See Figure 1, element 20; See also Specification, paragraph 0013) with the network proxy, which facilitates communications between the terminal and at least one communication device (See Figure 1, element 16; and Figure 2, steps 100, 102, and 104; See also Specification, paragraphs 0013 and 0016);
- b) selecting one of the plurality of communication sessions to be a first active communication session (See Figure 2, step 106; See also Specification, paragraph 0017);
- c) identifying the first active communication session to the network proxy (See Figure 2, step 108; See also Specification, paragraph 0017); and
- d) transferring packets to or from the network proxy using the first active communication session to effect communications with the at least one communication device (See Figure 2, step 110; See also Specification, paragraph 0017).

Claim 5, which depends from claim 1, recites that the method further comprises:

- e) determining a need to switch from the first active communication session (See Figure 2, step 112; See also Specification, paragraph 0018);
- f) selecting at least a second one of the plurality of communication sessions to be a second active communication session (See Specification, paragraph 0018);

g) providing indicia indicative of the need to switch from the first active communication session to the second active communication session (See Figure 2, step 114; See also Specification, paragraph 0018); and

h) transferring packets to or from the network proxy using only the second active communication session to effect the communications with the at least one communication device (See Figure 2, step 122; See also Specification, paragraph 0019).

Claim 8, which depends from claim 1, recites that the method further comprises receiving temporary IP addresses (See Figure 1, elements IP₁ and IP₂; and Figure 2, step 102; See also Specification, paragraph 0016) from the respective access networks and using the temporary IP addresses to establish the plurality of communication sessions, wherein a public IP address (See Figure 1, element IP_P; and Figure 2, step 102; See also Specification, paragraph 0016) associated with the terminal is supported by the network proxy (See Figure 1, element IP_P; and Figure 2, step 102; See also Specification, paragraph 0016).

Claim 9, which depends from claim 1, recites that the communication sessions are tunneling sessions with the network proxy (See Specification, paragraph 0016).

Independent claim 11 recites a terminal (See Figure 1, element 14; See also Specification, paragraph 0013) for facilitating packet communications over a plurality of access networks (See Figure 1, element 20; See also Specification, paragraph 0013) comprising:

a) communication circuitry (See Figure 4, elements 40, 42, and 48; See also Specification, paragraph 0022-0024) that facilitates communications with the plurality of access networks; and

b) a control system (See Figure 4, element 50; See also Specification, paragraphs 0022-0024) associated with the communication circuitry, wherein the control system:

i) establishes a plurality of communication sessions via the plurality of access networks with a network proxy (See Figure 1, element 12; See also Specification, paragraph 0013), which facilitates communications between the terminal and at least one communication device (See Figure 1, element 16; and Figure 2, steps 100, 102, and 104; See also Specification, paragraphs 0013 and 0016);

ii) selects one of the plurality of communication sessions to be a first active communication session (See Figure 2, step 106; See also Specification, paragraph 0017);

iii) identifies the first active communication session to the network proxy (See Figure 2, step 108; See also Specification, paragraph 0017); and

iv) transfers packets to or from the network proxy using the first active communication session to effect communications with the at least one communication device (See Figure 2, step 110; See also Specification, paragraph 0017).

Claim 15, which depends from claim 11, recites that the control system further:

v) determines a need to switch from the first active communication session (See Figure 2, step 112; See also Specification, paragraph 0018);

vi) selects at least a second one of the plurality of communication sessions to be a second active communication session (See Specification, paragraph 0018);

vi) sends indicia indicative of the need to switch from the first active communication session to the second active communication session (See Figure 2, step 114; See also Specification, paragraph 0018); and

vii) transfers packets to or from the network proxy using only the second active communication session to effect the communications with the at least one communication device (See Figure 2, step 122; See also Specification, paragraph 0019).

Claim 18, which depends from claim 11, recites that the control system further receives temporary IP addresses (See Figure 1, elements IP₁ and IP₂ and Figure 2, step 102; See also Specification, paragraph 0016) from the respective access networks and uses the temporary IP addresses to establish the plurality of communication sessions, wherein a public IP address (See Figure 1, element IP_P; and Figure 2, step 102; See also Specification, paragraph 0016) associated with the terminal is supported by the network proxy (See Figure 1, element IP_P; and Figure 2, step 102; See also Specification, paragraph 0016).

Claim 19, which depends from claim 11, recites that the communication sessions are tunneling sessions with the network proxy (See Specification, paragraph 0016).

Independent claim 21 recites a method for facilitating packet communications between a terminal (See Figure 1, element 14; See also Specification, paragraph 0013) and at least one communication device (See Figure 1, element 16; See also Specification, paragraph 0013) via a network proxy (See Figure 1, element 12; See also Specification, paragraph 0013) comprising:

a) establishing a plurality of communication sessions via a plurality of access networks (See Figure 1, element 20; See also Specification, paragraph 0013) with the terminal

(See Figure 1, element 20; and Figure 2, steps 100, 102, and 104; See also Specification, paragraphs 0013 and 0016);

b) receiving selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session (See Figure 2, steps 106 and 108; See also Specification, paragraph 0017);

c) transferring packets to or from the terminal using the first active communication session to effect communications with the terminal (See Figure 2, step 110; See also Specification, paragraph 0017); and

d) communicating with the at least one communication device on behalf of the terminal (See Specification, paragraph 0016).

Claim 22, which depends from claim 21, recites that the method further comprises:

e) receiving second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be an active communication session wherein there are at least first and second active communication sessions (See Figure 2, step 114; See also Specification, paragraph 0018); and

f) transferring packets to or from the terminal using the first and second active communication sessions to effect communications between the terminal and the at least one communication device (See Figure 2, step 116; See also Specification, paragraph 0018).

Claim 25, which depends from claim 21, recites that the method further comprises:

e) receiving switch indicia from the terminal indicating a need to switch from the first active communication session (See Figure 2, steps 112 and 114; See also Specification, paragraph 0018);

f) receiving first selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session (See Figure 2, step 114; See also Specification, paragraph 0018); and

g) transferring packets to or from the terminal using only the second active communication session to effect the communications with the at least one communication device (See Figure 2, step 122; See also Specification, paragraph 0019).

Claim 28, which depends from claim 21, recites that the communication sessions are tunneling sessions with the network proxy (See Specification, paragraph 0016).

Independent claim 30 recites a network proxy (See Figure 1, element 12; and Figure 3, element 12; See also Specification, paragraphs 0013 and 0021) for facilitating packet communications between a terminal (See Figure 1, element 14; See also Specification, paragraph 0013) and at least one communication device (See Figure 1, element 16; See also Specification, paragraph 0013) comprising:

- a) communication circuitry (See Figure 3, element 38; See also Specification, paragraph 0021) that facilitates communications with the plurality of access networks (See Figure 1, element 20; See also Specification, paragraph 0013); and
- b) a control system (See Figure 3, element 32; See also Specification, paragraph 0021) associated with the communication circuitry, wherein the control system:
 - i) establishes a plurality of communication sessions via the plurality of access networks with the terminal (See Figure 2, steps 100, 102, and 104; See also Specification, paragraph 0016),
 - ii) receives selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session (See Figure 2, steps 106 and 108; See also Specification, paragraph 0017);
 - iii) transfers packets to or from the terminal using the first active communication session to effect communications with the terminal (See Figure 2, step 110; See also Specification, paragraph 0017); and
 - iv) communicates with the at least one communication device on behalf of the terminal (See Specification, paragraph 0016).

Claim 31, which depends from claim 30, recites that the control system further:

- v) receives second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session wherein there are at least first and second active communication sessions (See Figure 2, step 114; See also Specification, paragraph 0018); and
- vi) transfers packets to or from the terminal using the first and second active communication sessions to effect the communications between the terminal and the at least one communication device (See Figure 2, step 116; See also Specification, paragraph 0018).

Claim 34, which ultimately depends from claim 32, recites that the control system further:

- vii) receives switch indicia from the terminal indicating a need to switch from the first active communication session (See Figure 2, steps 112 and 114; See also Specification, paragraph 0018);
- viii) receives the second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be the second active communication session (See Figure 2, step 114; See also Specification, paragraph 0018); and
- ix) transfers packets to or from the terminal using only the second active communication session to effect the communications with the at least one communication device (See Figure 2, step 122; See also Specification, paragraph 0019).

Claim 37, which depends from claim 30, recites that the communication sessions are tunneling sessions with the network proxy (See Specification, paragraph 0016).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A.** Whether claims 1-7, 10-17, 20-27, 29-36 and 38 were properly rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,862,277 B2 to *Pan et al.* (hereinafter “*Pan*”).
- B.** Whether claims 8 and 18 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pan* in view of U.S. Patent No. 6,748,439 B1 to *Monachello et al.* (hereinafter “*Monachello*”).
- C.** Whether claims 9, 19, 28, and 37 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pan* in view of U.S. Patent No. 7,072,657 B2 to *Watanabe et al.* (hereinafter “*Watanabe*”).

(7) ARGUMENT

A. Introduction

The Patent Office has not shown where all the elements of the pending claims are shown in the prior art with sufficient particularity to sustain an anticipation or an obviousness rejection. In particular, the Patent Office has not shown where the prior art discloses the feature of

identifying a first active communication session, which has been selected from a plurality of communication sessions. As such, the Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims for these reasons along with the reasons noted below.

B. Summary Of References

1. U.S. Patent No. 6,862,277 B2 To *Pan*

Pan generally relates to establishing a multimedia media session having various communication components. In particular, *Pan* discloses a multimedia communication session having a first communication session and a second communication session.¹ Moreover, *Pan* discloses a multimedia communication system 200 between a first communication device 202 and a second communication device 204.² According to *Pan*, the multimedia communication session may have a voice component in the first communication session and a video component in the second communication session.³ The first communication session is engaged through a first network 206 and the second communication session is engaged through a second network 208.⁴ According to *Pan*, a SIP invite request for the voice component is sent through the first network 206 and a SIP proxy 212 towards the second communication device 204, which ultimately acknowledges the SIP invite request and transmits an acknowledgement signal in order to engage the first communication session.⁵ Furthermore, *Pan* discloses that the first communication device 202 sends a second SIP invite request through the second communication network 208 and the SIP proxy 212 towards the second communication device 204.⁶ Here, the SIP proxy 212 will determine if the second SIP request is a new SIP invite request or a duplicate of the first SIP invite request.⁷ If the SIP proxy 212 determines that the second SIP invite request is not a duplicate of the first SIP invite request, the SIP proxy 212 provides the second SIP invite request to the second communication device 204, which acknowledge the second SIP request and engages a second communication session.⁸ Thus, *Pan* discloses a single multimedia

¹ See *Pan*, col. 3, ll. 26-29.

² *Id.* at col. 3, ll. 14-16.

³ *Id.* at col. 3, l. 47 through col. 4, l. 2.

⁴ *Id.* at col. 3, ll. 26-66.

⁵ *Id.* at col. 3, ll. 30-46.

⁶ *Id.* at col. 3, ll. 49-54.

⁷ *Id.* at col. 3, ll. 56-59.

⁸ *Id.* at col. 3, ll. 59-66.

communication session having a first session for voice data and a second session for video data. However, *Pan* does not disclose or suggest establishing a plurality of communication sessions and then identifying a first active communication session, which has been selected from a plurality of communication sessions. Instead, as noted, *Pan* only discloses a single multimedia communication session that has a voice component and a video component.

2. U.S. Patent No. 6,748,439 B1 To *Monachello*

Monachello generally relates to dynamically selecting a network service provider.⁹ In particular, *Monachello* discloses that a workstation provides a request to select a network service provider and presents the workstation with a list of network service providers that may be utilized at the workstation.¹⁰ *Monachello* also discloses that a user at the workstation selects a network service provider from the list and switches the workstation's IP address to a second IP address assigned to the selected network service provider such that the workstation may access a WAN using the selected network server.¹¹ Nonetheless, *Monachello* does not disclose or suggest establishing a plurality of communication sessions and then identifying a first active communication session, which has been selected from a plurality of communication sessions.

3. U.S. Patent No. 7,072,657 B2 To *Watanabe*

Watanabe generally relates to a method of coordinating a handoff between a first access network and a second access network.¹² Specifically, *Watanabe* discloses a hyper operator distributed center 400 that has established a virtual private network (VPN) 508 with a company intranet 210.¹³ In addition to the VPN 508, the hyper operator distributed center 400 establishes a VPN 506 with a mobile terminal 310 in an access network 502 via a gateway 504.¹⁴ When the mobile terminal 310 moves from the access network 502 to a target access network 510, the hyper operator distributed center 400 establishes a VPN 514 with the mobile terminal 310 between the target access network 510 via a gateway 512 while maintaining the VPN 508 with

⁹ See *Monachello*, col. 1, ll. 10-12.

¹⁰ *Id.* at col. 17, l. 62 through col. 18, l. 3.

¹¹ *Id.* at col. 18, ll. 4-15.

¹² See *Watanabe*, Abstract.

¹³ *Id.* at col. 6, ll. 31-33.

¹⁴ *Id.* at col. 6, ll. 27-31.

the company intranet 210.¹⁵ Nevertheless, *Watanabe* does not disclose or suggest establishing a plurality of communication sessions and then identifying a first active communication session, which has been selected from a plurality of communication sessions.

C. Legal Standards

1. For Establishing Anticipation

Section 102 of the Patent Act provides the statutory basis for an anticipation rejection and states *inter alia*:

A person shall be entitled to a patent unless

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language. . . .

The Federal Circuit's test for anticipation has been set forth numerous times. "It is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention." *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379 (Fed. Cir. 1986). This standard has been reinforced. "To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter." *PPG Indus. Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1577 (Fed. Cir. 1996) (citations omitted). Further, "a finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device." *C.R. Bard Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1349 (Fed. Cir. 1998) (emphasis added and citations omitted).

2. For Establishing Obviousness

Section 103(a) of the Patent Act provides the statutory basis for an obviousness rejection and reads as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the

¹⁵ See *Watanabe*, col. 6, ll. 36-40.

subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Courts have interpreted 35 U.S.C. § 103(a) as a question of law based on underlying facts. As the Federal Circuit stated:

Obviousness is ultimately a determination of law based on underlying determinations of fact. These underlying factual determinations include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of nonobviousness.¹⁶

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. “Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demand known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.¹⁷ (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).”¹⁸

Some elements may be inherent within the reference. “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.’”¹⁹ “The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”²⁰ Thus, the possibility that an element may be derived from the reference is insufficient to establish that said element is inherent to the reference.

Whether an element is implicitly or explicitly taught by a reference or combination of references is open to interpretation. While the Patent Office is entitled to give claim terms their

¹⁶ *Monarch Knitting Mach. Corp. v. Sulzer Morat GmBH*, 45 U.S.P.Q.2d (BNA) 1977, 1981 (Fed. Cir. 1998) (internal citations omitted).

¹⁷ See *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)

¹⁸ *KSR Int'l v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S., Apr. 30, 2007).

¹⁹ *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (quoting *Cont'l Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991)).

²⁰ *Id.* (citation and quotation omitted).

broadest reasonable interpretation, this interpretation is limited by a number of factors. First, the interpretation must be consistent with the specification.²¹ Second, the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.²² Finally, the interpretation must be reasonable.²³ This means that the words of the claim must be given their plain meaning unless Appellant has provided a clear definition in the specification.²⁴

If a claim element is missing after the combination is made, then the combination does not render obvious the claimed invention, and the claims are allowable. As stated by the Federal Circuit, “[if] the PTO fails to meet this burden, then the Appellant is entitled to the patent.”²⁵

D. Claims 1-7, 10-17, 20-27, 29-36 And 38 Are Patentable Over *Pan*

Claims 1-7, 10-17, 20-27, 29-36, and 38 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Pan*. The Appellant respectfully traverses the rejection.

1. *Pan* Does Not Disclose Identifying A First Active Communication Session, Which Has Been Selected From A Plurality Of Communication Sessions

Prior to addressing the rejection, the Appellant provides a brief summary of an embodiment of the present invention, which provides a terminal with the capability of establishing multiple communication sessions with a public network proxy through different access networks. The terminal can actively communicate with the public network proxy to control which of the multiple communication paths are active, as well as control the transition from actively using one communication path to using another. Thus, according to an embodiment, the terminal establishes multiple communication sessions and the terminal may switch between communication sessions. In one embodiment, the communication sessions are reserved tunneling sessions, and the terminal cooperates with the public network proxy to effectively control how many tunneling sessions are established, how many tunneling sessions are active at any given time, and the transition from one tunneling session to another for active communications. Furthermore, according to an embodiment, after establishment of a plurality of

²¹ *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); MPEP § 2111.

²² *In re Cortright*, 165 F.3d 1353, 1359, (Fed. Cir. 1999); MPEP § 2111.

²³ *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004); MPEP § 2111.01.

²⁴ *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989).

²⁵ *In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002).

communication sessions, a selection of one of the communication sessions to be an active communication session is made and then an identification of the first active communication session to a network proxy is made. The Appellant submits that the cited reference does not disclose, or even suggest, establishing a plurality of communication sessions and then identifying a first active communication session, which has been selected from a plurality of communication sessions.

Now turning to the rejection, in order to anticipate a claim under 35 U.S.C. § 102, “the reference must teach every element of the claim.” M.P.E.P. § 2131. The Appellant submits that *Pan* does not teach every element recited in claims 1-7, 10-17, 20-27, 29-36, and 38. More specifically, claim 1 recites a method for facilitating packet communications comprising, among other features, selecting a communication session from a plurality of communication sessions as a first active communication session and “identifying the first active communication session to the network proxy.” Claim 11 includes similar features. *Pan* does not disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. The Patent Office maintains the rejection by stating that *Pan* discloses this feature in col. 4, ll. 65-67.²⁶ The Appellant respectfully disagrees. While the cited portion of *Pan* does disclose that a communication device 202 provides a SIP invite request 300 to a SIP proxy 212, this does not relate to identifying a first active communication session to a network proxy. Instead, this relates to requesting a communication session. Specifically, the SIP invite requests are being sent in an effort to establish a communication session. According to *Pan*, a communication session had not been set-up yet. As such, a communication session has not been established, much less a plurality of communication sessions. Therefore, in *Pan*, a communication session cannot be selected from a plurality of communication sessions.

The Patent Office responds to this line of reasoning by indicating that *Pan* discloses identifying a first active communication session, which has been selected from a plurality of communication sessions in col. 3, ll. 35-40.²⁷ The Appellant respectfully traverses. At most, the cited portion of *Pan* discloses that the SIP proxy 212 receives the SIP invite request 300 and forwards the SIP invite request 300 to a second communication device 204.²⁸ However, nowhere does the cited portion disclose identifying a first active communication session, which has been

²⁶ See Office Action mailed November 17, 2008, page 5.

²⁷ Id. at pages 3 and 4.

²⁸ See *Pan*, col. 3, ll. 38-40.

selected from a plurality of communication sessions. In fact, nowhere does the cited portion disclose anything about a plurality of communication sessions, much less identifying a first active communication session from a plurality of communication sessions.

In addition, the Patent Office asserts that the “limitation of claim 1 simply states ‘establishing a plurality of communication sessions’, nothing in the claim suggests ‘a plurality of communication session have (sic) been established.’”²⁹ The Appellant respectfully disagrees. More specifically, claim 1 recites “establishing a plurality of communication sessions via a plurality of access networks with the network proxy.” Thus, the claim clearly and explicitly recites establishing a plurality of communication sessions. Claim 1 also recites “selecting one of the plurality of communication sessions to be a first active communication session.” Thus, the claim recites that a communication session is selected. The Appellant submits that as the claim recites establishing a plurality of communication sessions and then selecting a communication session of the plurality of communication sessions, the claim “suggests” that a plurality of communication sessions has been established. In particular, as the claim recites establishing communication sessions and the claim further recites selecting one of the plurality of communication sessions to be a first active communication session, the feature of an established communication session is inherent and implicit. Therefore, claims 1 and 11, along with claims 2-4, 6, 7, 10, 12-14, 16, 17, and 20, which ultimately depend from either claim 1 or claim 11, are patentable over *Pan*.

2. *Pan* Does Not Disclose Receiving Selection Indicia From A Terminal Identifying One Of A Plurality Of Communication Sessions To Be A First Active Communication Session

Claim 21 recites a method for facilitating packet communications comprising, among other features, “receiving selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session.” Claim 30 includes similar features. As detailed above, *Pan* does not disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. Thus, it follows that *Pan* cannot disclose receiving selection indicia from a terminal identifying one of a plurality of communication sessions to be a first active communication session. For this reason, claims 21

²⁹ See Office Action mailed November 17, 2008, page 2.

and 30, along with claims 23, 24, 26, 27, 29, 32, 33, 35, 36, and 38, which depend from either claim 21 or 30, are patentable over the cited reference.

3. *Pan* Does Not Disclose Determining A Need To Switch From A First Active Communication Session

Claim 5, which depends from claim 1, recites “determining a need to switch from the first active communication session.” Claim 15, which depends from claim 11, includes similar features. The Appellant submits that *Pan* does not disclose determining a need to switch from a first active communication session. In maintaining the rejection, the Patent Office asserts that *Pan* discloses this feature in col. 11, ll. 8-24.³⁰ The Appellant respectfully disagrees. At most, the cited portion discloses using a multimedia call between the first communication device 202 and a second communication device 204 where a voice component of the multimedia call is transmitted via a cellular network and a video component is received via an access point 518.³¹ However, nowhere does the cited portion disclose determining a need to switch from the first cellular network to transmitting data via the access point 518.

4. *Pan* Does Not Disclose Providing Indicia Indicative Of A Need To Switch From A First Active Communication Session To A Second Active Communication Session

Claim 5 also recites “providing indicia indicative of the need to switch from the first active communication session to the second active communication session.” Claim 15 includes similar features. The Appellant submits that *Pan* does not disclose providing indicia indicative of a need to switch from a first active communication session to a second active communication session. The Patent Office supports the rejection by stating that *Pan* discloses this feature in col. 11, ll. 8-24.³² The Appellant respectfully disagrees for a number of reasons. First, as mentioned above, *Pan* does not disclose determining a need to switch from a first active communication. As such, it follows that *Pan* cannot disclose providing indicia indicative of a need to switch from a first active communication session to a second active communication session.

Second, as detailed above, at most, the cited portion discloses using a multimedia call between the first communication device 202 and the second communication device 204 where a

³⁰ See Office Action mailed November 17, 2009, page 7.

³¹ See *Pan*, col. 11, ll. 8-24.

³² See Office Action mailed November 17, 2009, page 7.

voice component of the multimedia call is transmitted via a cellular network and a video component is received via an access point 518. However, nowhere does the cited portion disclose providing indicia indicative of a need to switch from the cellular network to transmitting data via the access point 518. Thus, for this reason and the reasons noted above, claims 5 and 15 are patentable over the cited reference.

5. *Pan* Does Not Disclose Receiving Second Selection Indicia From A Terminal Identifying A Second Communication Session From A Plurality Of Communication Sessions To Be An Active Communication Session

Claim 22, which depends from claim 21, recites “receiving second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be an active communication session.” Claim 31, which depends from claim 30, includes similar features. The Appellant submits that *Pan* does not disclose receiving second selection indicia from a terminal identifying a second communication session from a plurality of communication sessions to be an active communication session. As detailed above, *Pan* does not disclose receiving selection indicia from a terminal identifying one of a plurality of communication sessions to be a first active communication session. Accordingly, it follows that *Pan* cannot disclose receiving second selection indicia from a terminal identifying a second communication session from a plurality of communication sessions to be an active communication session. In addition to the reasons noted above with reference to claims 21 and 30, claims 22 and 31 are patentable over the cited reference.

6. *Pan* Does Not Disclose Receiving Switch Indicia From A Terminal Indicating A Need To Switch From A First Active Communication Session

Claim 25, which ultimately depends from claim 21, recites “receiving switch indicia from the terminal indicating a need to switch from the first active communication session.” Claim 34, which ultimately depends from claim 30, includes similar features. As detailed above, *Pan* does not disclose providing indicia indicative of a need to switch from a first active communication session. Thus, *Pan* cannot disclose receiving switch indicia from a terminal indicating a need to switch from a first active communication session.

7. *Pan* Does Not Disclose Receiving Selection Indicia From A Terminal Identifying At Least A Second One Of A Plurality Of Communication Sessions To Be A Second Active Communication Session

Claim 25 also recites receiving “selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session.” Claim 34 includes similar features. The Appellant submits that *Pan* does not disclose receiving selection indicia from a terminal identifying at least a second one of a plurality of communication sessions to be a second active communication session. As outlined above, *Pan* does not disclose receiving selection indicia from a terminal identifying one of a plurality of communication sessions to be a first active communication session. Therefore, *Pan* cannot disclose receiving selection indicia from a terminal identifying at least a second one of a plurality of communication sessions to be a second active communication session. For this reason and the reasons noted above, claims 25 and 34 are patentable over the cited reference.

E. Claims 8 And 18 Are Patentable Over *Pan* In View Of *Monachello*

Claims 8 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pan* in view of *Monachello*. The Appellant respectfully traverses the rejection. As detailed above, claims 1 and 11, the base claims from which claims 8 and 18 respectively depend, are patentable over *Pan*. In addition, *Monachello* does not overcome the previously noted deficiencies of *Pan*. Accordingly, claims 8 and 18 are patentable over the cited references.

F. Claims 9, 19, 28, And 37 Are Patentable Over *Pan* In View Of *Watanabe*

Claims 9, 19, 28, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pan* in view of *Watanabe*. The Appellant respectfully traverses the rejection. As detailed above, claims 1, 11, 21, and 30, the base claims from which claims 9, 19, 28, and 37 respectively depend, are patentable over *Pan*. In addition, *Watanabe* does not overcome the previously noted deficiencies of *Pan*. Accordingly, claims 9, 19, 28, and 37 are patentable over the cited references.

G. Conclusion

As set forth above, the cited references do not disclose the feature of identifying a first active communication session, which has been selected from a plurality of communication sessions. As such, the Appellant requests that the Board reverse the Examiner and instruct the Examiner to allow the claims.

Respectfully submitted,
WITHROW & TERRANOVA, P.L.L.C.

By:



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Registration No. 45,742
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Date: June 17, 2009
Attorney Docket: 7000-263

(8) CLAIMS APPENDIX

1. A method for facilitating packet communications from a terminal to a network proxy comprising:
 - a) establishing a plurality of communication sessions via a plurality of access networks with the network proxy, which facilitates communications between the terminal and at least one communication device;
 - b) selecting one of the plurality of communication sessions to be a first active communication session;
 - c) identifying the first active communication session to the network proxy; and
 - d) transferring packets to or from the network proxy using the first active communication session to effect communications with the at least one communication device.
2. The method of claim 1 further comprising:
 - e) selecting at least a second one of the plurality of communication sessions to be a second active communication session wherein there are at least first and second active communication sessions; and
 - f) transferring packets to or from the network proxy using the first and second active communication sessions to effect the communications with the at least one communication device.
3. The method of claim 2 wherein the packets transferred using the first active communication session carry information different than carried in the packets transferred using the second active communication session.
4. The method of claim 2 wherein the packets are duplicated and sent over both the first and second active communication sessions.
5. The method of claim 1 further comprising:
 - e) determining a need to switch from the first active communication session;
 - f) selecting at least a second one of the plurality of communication sessions to be a second active communication session;

- g) providing indicia indicative of the need to switch from the first active communication session to the second active communication session; and
- h) transferring packets to or from the network proxy using only the second active communication session to effect the communications with the at least one communication device.

6. The method of claim 5 further comprising transferring the packets to or from the network proxy using the first and second active communication sessions to effect the communications with the at least one communication device prior to using only the second active communication session.

7. The method of claim 6 further comprising sending second indicia instructing the network proxy to stop using the first active communication session.

8. The method of claim 1 further comprising receiving temporary IP addresses from the respective access networks and using the temporary IP addresses to establish the plurality of communication sessions, wherein a public IP address associated with the terminal is supported by the network proxy.

9. The method of claim 1 wherein the communication sessions are tunneling sessions with the network proxy.

10. The method of claim 1 wherein communications with the plurality of access networks are based on disparate communication technologies.

11. A terminal for facilitating packet communications over a plurality of access networks comprising:

- a) communication circuitry that facilitates communications with the plurality of access networks; and
- b) a control system associated with the communication circuitry, wherein the control system:

- i) establishes a plurality of communication sessions via the plurality of access networks with a network proxy, which facilitates communications between the terminal and at least one communication device;
- ii) selects one of the plurality of communication sessions to be a first active communication session;
- iii) identifies the first active communication session to the network proxy; and
- iv) transfers packets to or from the network proxy using the first active communication session to effect communications with the at least one communication device.

12. The terminal of claim 11 wherein the control system further:

- v) selects at least a second one of the plurality of communication sessions to be a second active communication session wherein there are at least first and second active communication sessions; and
- vi) transfers packets to or from the network proxy using the first and second active communication sessions to effect the communications with the at least one communication device.

13. The terminal of claim 12 wherein the packets transferred using the first active communication session carry information different than carried in the packets transferred using the second active communication session.

14. The terminal of claim 12 wherein the packets are duplicated and sent over both the first and second active communication sessions.

15. The terminal of claim 11 wherein the control system further:

- v) determines a need to switch from the first active communication session;
- vi) selects at least a second one of the plurality of communication sessions to be a second active communication session;
- vi) sends indicia indicative of the need to switch from the first active communication session to the second active communication session; and

vii) transfers packets to or from the network proxy using only the second active communication session to effect the communications with the at least one communication device.

16. The terminal of claim 15 wherein the control system further-transfers the packets to or from the network proxy using the first and second active communication sessions to effect the communications with the at least one communication device prior to using only the second active communication session.

17. The terminal of claim 16 wherein the control system further-sends second indicia instructing the network proxy to stop using the first active communication session.

18. The terminal of claim 11 wherein the control system further receives temporary IP addresses from the respective access networks and uses the temporary IP addresses to establish the plurality of communication sessions, wherein a public IP address associated with the terminal is supported by the network proxy.

19. The terminal of claim 11 wherein the communication sessions are tunneling sessions with the network proxy.

20. The terminal of claim 11 wherein communications with the plurality of access networks are based on disparate communication technologies.

21. A method for facilitating packet communications between a terminal and at least one communication device via a network proxy comprising:

- a) establishing a plurality of communication sessions via a plurality of access networks with the terminal;
- b) receiving selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session;
- c) transferring packets to or from the terminal using the first active communication session to effect communications with the terminal; and

- d) communicating with the at least one communication device on behalf of the terminal.
22. The method of claim 21 further comprising:
- e) receiving second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be an active communication session wherein there are at least first and second active communication sessions; and
 - f) transferring packets to or from the terminal using the first and second active communication sessions to effect communications between the terminal and the at least one communication device.
23. The method of claim 22 wherein the packets transferred using the first active communication session carry information different than carried in the packets transferred using the second active communication session.
24. The method of claim 22 wherein the packets are duplicated and sent over both the first and second active communication sessions.
25. The method of claim 21 further comprising:
- e) receiving switch indicia from the terminal indicating a need to switch from the first active communication session;
 - f) receiving first selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session; and
 - g) transferring packets to or from the terminal using only the second active communication session to effect the communications with the at least one communication device.
26. The method of claim 25 further comprising transferring the packets to or from the network proxy using the first and second active communication sessions to effect the communications with the at least one communication device prior to using only the second active communication session.

27. The method of claim 26 further comprising receiving second selection indicia from the terminal and stopping use of the first active communication session to transfer the packets based on the second selection indicia.
28. The method of claim 21 wherein the communication sessions are tunneling sessions with the network proxy.
29. The method of claim 21 wherein the terminal's communications with the plurality of access networks are based on disparate communication technologies.
30. A network proxy for facilitating packet communications between a terminal and at least one communication device comprising:
- a) communication circuitry that facilitates communications with the plurality of access networks; and
 - b) a control system associated with the communication circuitry, wherein the control system:
 - i) establishes a plurality of communication sessions via the plurality of access networks with the terminal,
 - ii) receives selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session;
 - iii) transfers packets to or from the terminal using the first active communication session to effect communications with the terminal; and
 - iv) communicates with the at least one communication device on behalf of the terminal.
31. The network proxy of claim 30 wherein the control system further:
- v) receives second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session wherein there are at least first and second active communication sessions; and

vi) transfers packets to or from the terminal using the first and second active communication sessions to effect the communications between the terminal and the at least one communication device.

32. The network proxy of claim 31 wherein the packets transferred using the first active communication session carry information different than carried in the packets transferred using the second active communication session.

33. The network proxy of claim 31 wherein the packets are duplicated and sent over both the first and second active communication sessions.

34. The network proxy of claim 32 wherein the control system further:

vii) receives switch indicia from the terminal indicating a need to switch from the first active communication session;

viii) receives the second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be the second active communication session; and

ix) transfers packets to or from the terminal using only the second active communication session to effect the communications with the at least one communication device.

35. The network proxy of claim 34 wherein the control system further transfers the packets to or from the network proxy using the first and second active communication sessions to effect communications with the at least one communication device prior to using only the second active communication session.

36. The network proxy of claim 35 wherein the control system further receives the second selection indicia from the terminal and stop use of the first active communication session to transfer the packets based on the second selection indicia.

37. The network proxy of claim 30 wherein the communication sessions are tunneling sessions with the network proxy.

38. The network proxy of claim 30 wherein the terminal's communications with the plurality of access networks are based on disparate communication technologies.

(9) EVIDENCE APPENDIX

The Appellant relies on no evidence, thus this appendix is not applicable.

(10) RELATED PROCEEDINGS APPENDIX

This Appeal Brief is related to a Notice of Appeal and Pre-Appeal Brief Request for Review (hereinafter “PABR”) filed on August 8, 2008 (attached as Appendix A). In response to the PABR and Notice of Appeal filed on August 8, 2008, the Patent Office reopened prosecution through the mailing of a non-final Office Action on November 17, 2008.

Appendix A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,167	07/28/2003	Samuel H. Christie IV	7000-263	5590
27820	7590	11/19/2008	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C.			PIHAM, BRENDA H	
100 REGENCY FOREST DRIVE				
SUITE 160			ART UNIT	PAPER NUMBER
CARY, NC 27518			2416	
			MAIL DATE	DELIVERY MODE
			11/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Panel Decision from Pre-Appeal Brief Review	Application/Control No.	Applicant(s)/Patent under Reexamination
	10/628,167	CHRISTIE, SAMUEL H.
	BRENDA PHAM	Art Unit 2416

This is in response to the Pre-Appeal Brief Request for Review filed 8 August 2008.

1. **Improper Request** – The Request is improper and a conference will not be held for the following reason(s):

- The Notice of Appeal has not been filed concurrent with the Pre-Appeal Brief Request.
- The request does not include reasons why a review is appropriate.
- A proposed amendment is included with the Pre-Appeal Brief request.
- Other: _____

The time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

2. **Proceed to Board of Patent Appeals and Interferences** – A Pre-Appeal Brief conference has been held. The application remains under appeal because there is at least one actual issue for appeal. Applicant is required to submit an appeal brief in accordance with 37 CFR 41.37. The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable.

- The panel has determined the status of the claim(s) is as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

3. **Allowable application** – A conference has been held. The rejection is withdrawn and a Notice of Allowance will be mailed. Prosecution on the merits remains closed. No further action is required by applicant at this time.

4. **Reopen Prosecution** – A conference has been held. The rejection is withdrawn and a new Office action will be mailed. No further action is required by applicant at this time.

All participants:

(1) BRENDA PHAM. (3)_____

(2) Huy Vu. (4)_____

/Huy D. Vu/
Supervisory Patent Examiner, Art
Unit 2616

Electronic Acknowledgement Receipt

EFS ID:	3751533
Application Number:	10628167
International Application Number:	
Confirmation Number:	5590
DOCKETED M24818/08	
Title of Invention:	Mobility in a multi-access communication network
First Named Inventor/Applicant Name:	Samuel H. Christie
Customer Number:	27820
Filer:	Benjamin Withrow/Michelle Heymann
Filer Authorized By:	Benjamin Withrow
Attorney Docket Number:	7000-263
Receipt Date:	08-AUG-2008
Filing Date:	28-JUL-2003
Time Stamp:	13:46:57
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$ 510
RAM confirmation Number	7177
Deposit Account	501732
Authorized User	JOSEPHSON,ANTHONY J.
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:	
Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part/.zip	Pages (if appl.)
1	Notice of Appeal Filed	Notice_of_Appeal_8-8-08.pdf	70308 cd84983105a9d095b148183d22c45c5e d848afc	no	1

Warnings:

Information:

2	Pre-Brief Conference request	PABR_8-8-08.pdf	58990 10d7d04b1a04b1c6940292ca0bd429a 23f9e9d	no	1
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Warnings:

Information:

3	Pre-Brief Conference request	Remarks_for_PABR_8-8-08.pdf	343036 a05ae653b814d33d20eab24b4a5bb3b 437586921	no	5
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Warnings:

Information:

4	Fee Worksheet (PTO-06)	fee-info.pdf	8142 e05bbdc0e33d211c831627a7f4c31ce3eaf 383684	no	2
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Warnings:

Information:

Total Files Size (in bytes): 480476

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

Electronic Patent Application Fee Transmittal

Application Number:	10628167			
Filing Date:	28-Jul-2003			
Title of Invention:	Mobility in a multi-access communication network			
First Named Inventor/Applicant Name:	Samuel H. Christie			
Filer:	Benjamin Withrow/Michelle Heymann			
Attorney Docket Number:	7000-263			
Filed as Large Entity				
Utility Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Notice of appeal	1401	1	510	510
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				510

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**NOTICE OF APPEAL FROM THE EXAMINER TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

7000-263

I hereby certify that this correspondence is being transmitted via facsimile on the date indicated below to:

Examiner: _____
Fax Number: _____ Art Unit: _____
Date: _____

Signature _____

Typed or printed name _____

In re Application of
Samuel H. Christie, IVApplication Number
10/628,167 Filed
7/28/2003

For MOBILITY IN A MULTI-ACCESS COMMUNICATION NETWORK

Art Unit
2616 Examiner
Brenda H. Pham

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b))

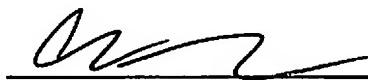
\$ 510.00

- Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ _____
- A check in the amount of the fee is enclosed.
- Payment by credit card. Form PTO-2038 is attached.
- The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.
- The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1732. I have enclosed a duplicate copy of this sheet.
- A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number 45,742.
- attorney or agent acting under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a).



Signature

Anthony J. Josephson

Typed or printed name

919-238-2300

Telephone number

August 8, 2008

Date

**NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.**

- *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.191. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

7000-263

I hereby certify that this correspondence is being transmitted via facsimile on the date indicated below to:
 Examiner: Brenda H. Pham
 Art Unit: 2616
 Fax Number: 571-273-8300
 on _____

Application Number

10/628,167

Filed

7/28/2003

First Named Inventor

Samuel H. Christie, IV

Art Unit

2616

Examiner

Brenda H. Pham

Signature _____

Typed or printed name _____

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
 assignee of record of the entire interest.
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
 (Form PTO/SB/96)
 attorney or agent of record. 45,742
 Registration number _____
 attorney or agent acting under 37 CFR 1.34.
 Registration number if acting under 37 CFR 1.34 _____



Signature

Anthony J. Josephson

Typed or printed name

919-238-2300

Telephone number

August 8, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
 Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Samuel H. Christie, IV
Serial No. 10/628,167

Filed: 07/28/2003

For: **MOBILITY IN A MULTI-ACCESS COMMUNICATION NETWORK**

Examiner: Brenda H. Pham
Art Unit: 2616

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The current remarks provide the succinct and focused set of arguments for which review is being requested and accompany the concurrently filed Notice of Appeal. The Appellant has enclosed a payment in the amount of \$510.00 to cover the fee associated with the Notice of Appeal. If any additional fees are required in association with this response, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

REMARKS

Claims 1-5, 9-15, 19-25, 28-33, 34, 37, and 38 were rejected in the Final Office Action mailed May 9, 2008. Claims 6-8, 16-18, 26, 27, 35, and 36 were deemed allowable if rewritten in independent form. In view of the issues giving rise to this appeal (detailed below), the Appellant has not rewritten claims 6-8, 16-18, 26, 27, 35, and 36 in independent form.

Claims 1-5, 10-15, 20-25, 29-34, and 38 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,862,277 B2 to *Pan et al.* (hereinafter “*Pan*”). The Appellant respectfully traverses the rejection.

Prior to addressing the rejection, the Appellant provides a brief summary of an embodiment of the present invention. The present invention provides a terminal with the capability of establishing multiple communication sessions with a public network proxy through different access networks. The terminal can actively communicate with the public network proxy to control which of the multiple communication paths are active, as well as control the transition from actively using one communication path to using another. Thus, according to the

present invention, the terminal establishes multiple communication sessions and the terminal may switch between communication sessions. In one embodiment, the communication sessions are reserved tunneling sessions, and the terminal cooperates with the public network proxy to effectively control how many tunneling sessions are established, how many tunneling sessions are active at any given time, and the transition from one tunneling session to another for active communications. Furthermore, according to the present invention, after establishment of a plurality of communication sessions, the present invention selects one of the communication sessions to be an active communication session and then identifies the first active communication session to a network proxy. The Appellant submits that the cited reference does not disclose, or even suggest, that, after a plurality of communication sessions have been established, selecting one of the communication sessions and then identifying the first active communication session.

Now turning to the rejections, in order to anticipate a claim under 35 U.S.C. § 102, “the reference must teach every element of the claim.” M.P.E.P. § 2131. The Appellant submits that *Pan* does not teach every element recited in claims 1-5, 10-15, 20-25, 29-33, 35, and 38. More specifically, claim 1 recites a method for facilitating packet communications comprising, among other features, after selecting a communication session from a plurality of communication sessions, “identifying the first active communication session to the network proxy.” Claim 11 includes similar features. *Pan* does not disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. The Patent Office maintains the rejection by stating that *Pan* discloses this feature in col. 4, ll. 65-67.¹ The Appellant respectfully disagrees. While the cited portion of *Pan* does disclose that a communication device 202 provides a SIP invite request 300 to a SIP proxy 212, this does not relate to identifying a first active communication session to a network proxy. Instead, this relates to requesting a communication session. Specifically, the SIP invite requests are being sent in an effort to establish a communication session. According to the *Pan* patent disclosure, a communication session had not been set-up yet. As such, a communication session has not been established, much less a plurality of communication sessions. Therefore, a communication session cannot be selected from a plurality of communication sessions.

¹ See Office Action mailed December 26, 2007, page 3 and Final Office Action mailed May 9, 2008, page 5.

The Patent Office responds to this line of reasoning by indicating that *Pan* discloses this feature in col. 3, ll. 35-40.² The Appellant respectfully traverses. At most, the cited portion of *Pan* discloses that the SIP proxy 212 receives the SIP invite request 300 and forwards the SIP invite request 300 to a second communication device 204.³ However, nowhere does the cited portion disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. In fact, nowhere does the cited portion disclose anything about a plurality of communication sessions, much less identifying a first active communication session from a plurality of communication sessions. Therefore, claims 1 and 11, along with claims 2, 3, 10, 12, 13, and 20, which ultimately depend from either claim 1 or claim 11, are patentable over *Pan* and the Appellant requests that the rejection be withdrawn.

Claim 21 recites a method for facilitating packet communications comprising, among other features, “receiving selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session.” Claim 30 includes similar features. As detailed above, *Pan* does not disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. Thus, it follows that *Pan* cannot disclose receiving selection indicia from a terminal identifying one of a plurality of communication sessions to be a first active communication session. For this reason, claims 21 and 30, along with claims 23, 29, 32, and 38, which depend from either claim 21 or 30, are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claim 4, which ultimately depends from claim 1, recites that “packets are duplicated and sent over both the first and second active communication sessions.” Claim 14, which ultimately depends from claim 11, claim 24, which ultimately depends from claim 21, and claim 33, which ultimately depends from claim 30, include similar features. As detailed in the Response filed March 26, 2008 on page 4, *Pan* does not disclose that packets are duplicated and sent over first and second active communication sessions. In addition to the reasons noted above with respect to claims 1, 11, 21, and 30, claims 4, 14, 24, and 33 are patentable over *Pan* and the Appellant requests that the rejection be withdrawn.

Claim 5, which depends from claim 1, recites “determining a need to switch from the first active communication session.” Claim 15, which depends from claim 11, includes similar

² See Final Office Action mailed May 9, 2008, pages 3 and 4.

³ See *Pan*, col. 3, ll. 38-40.

features. *Pan* does not disclose determining a need to switch from a first active communication session, as detailed in the Response filed March 26, 2008 on page 4. Claim 5 also recites “providing indicia indicative of the need to switch from the first active communication session to the second active communication session.” Claim 15 includes similar features. *Pan* does not disclose providing indicia indicative of a need to switch from a first active communication session to a second active communication session, as detailed in the Response filed March 26, 2008 in pages 4 and 5. Thus, claims 5 and 15 are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claim 22, which depends from claim 21, recites “receiving second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be an active communication session.” Claim 31, which depends from claim 30, includes similar features. As outlined in the Response filed March 26, 2008 on page 5, *Pan* does not disclose receiving second selection indicia from a terminal identifying a second communication session from a plurality of communication sessions to be an active communication session. Therefore, claims 22 and 31 are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claim 25, which ultimately depends from claim 21, recites “receiving switch indicia from the terminal indicating a need to switch from the first active communication session.” Claim 34, which ultimately depends from claim 30, includes similar features. As discussed in the Response filed March 26, 2008 on pages 5 and 6, *Pan* does not disclose providing indicia indicative of a need to switch from a first active communication session. Claim 25 also recites receiving “selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session.” Claim 34 includes similar features. As outlined in the Response filed March 26, 2008 on page 6, *Pan* does not disclose receiving selection indicia from a terminal identifying at least a second one of a plurality of communication sessions to be a second active communication session. Thus, claims 25 and 34 are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claims 9, 19, 28, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pan* in view of U.S. Patent No. 7,072,657 B2 to *Watanabe et al.* (hereinafter “*Watanabe*”). The Appellant respectfully traverses the rejection. As detailed above, claims 1, 11, 21, and 30,

the base claims from which claims 9, 19, 28, and 37 respectively depend, are patentable over *Pan*. In addition, *Watanabe*, which generally pertains to reestablishing a virtual private network when a terminal moves between networks, does not overcome the previously noted fundamental deficiencies of *Pan*.⁴ Accordingly, claims 9, 19, 28, and 37 are patentable over the cited references and the Appellant requests that the rejection be withdrawn.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Appellant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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Date: August 8, 2008
Attorney Docket: 7000-263

⁴ See *Watanabe* at col. 6, ll. 3-40.